

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/001,039 12/30/97 JOLLY

D 1155.005

HM12/1227

EXAMINER

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EMERYVILLE CA 94662-8097

SCHWARTZMAN, R

ART UNIT	PAPER NUMBER
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1636

*DL*

DATE MAILED:

12/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Advisory Action</b>	Application No. <b>09/001,039</b>	Applicant(s) <b>Jolly et al.</b>
	Examiner <b>Robert Schwartzman</b>	Group Art Unit <b>1636</b>

**THE PERIOD FOR RESPONSE: [check only a) or b)]**

- a)  expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due two months from the date of the Notice of Appeal filed on Dec 18, 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Dec 18, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

The proposed amendment(s):

- will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- will not be entered because:
  - they raise new issues that would require further consideration and/or search. (See note below).
  - they raise the issue of new matter. (See note below).
  - they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Applicant's response has overcome the following rejection(s):

\_\_\_\_\_

\_\_\_\_\_

Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached.

\_\_\_\_\_

The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: 37-56

Claims objected to: 4 and 5

Claims rejected: 1-3, 6-11, 57, 58, and 61-68

The proposed drawing correction filed on \_\_\_\_\_ has  has not been approved by the Examiner.

Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_.

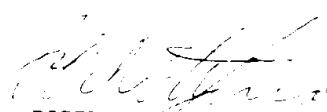
Other

Art Unit: 1636

***Response to Arguments***

The arguments regarding the rejection of claims 6-11, 58 and 61-68 are not deemed to be sufficiently new or convincing to overcome the rejection.

The arguments regarding the rejection of claims 1-3 as obvious over Mulligan et al. in view of either Mason et al. or Takeuchi et al. and the rejection of claim 57 as obvious over Kay et al. in view of either Mason et al. or Takeuchi et al. are not deemed to be sufficiently new or convincing to overcome the rejections. Applicants submit a declaration under 37 C.F.R. 131 in an attempt to antedate the Mulligan, Mason and Takeuchi references. First, the declaration has not been executed by Dr. Jolly and therefore cannot be considered. Second, even if the declaration could be considered it would carry no weight. A declaration must state facts and produce documentary evidence and exhibits in support thereof (see MPEP 715.07). The present declaration merely indicates the unsubstantiated conclusions of Dr. Jolly following a review of undisclosed laboratory notebooks and monthly reports. Finally, the Mulligan reference has an effective filing date of at least October 31, 1991 based on the parent application. Thus, antedating the presently claimed invention to May 25, 1994 would not remove Mulligan as prior art.



ROBERT A. SCHWARTZMAN  
PRIMARY EXAMINER